



# House of Representatives

## File No. 612

General Assembly

January Session, 2009

**(Reprint of File No. 72)**

House Bill No. 6433  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
April 9, 2009

### **AN ACT CONCERNING THE REGULATION OF CHARITABLE FUNDS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 21a-190a of the general statutes is repealed and  
2 the following is substituted in lieu thereof (*Effective October 1, 2009*):

3 As used in sections 21a-190a to 21a-190l, inclusive, as amended by  
4 this act:

5 (1) "Charitable organization" means any person who is or holds  
6 himself out to be established for any benevolent, educational,  
7 philanthropic, humane, scientific, patriotic, social welfare or advocacy,  
8 public health, environmental conservation, civic or eleemosynary  
9 purpose, or for the benefit of law enforcement officers, firefighters or  
10 other persons who protect the public safety.

11 (2) "Person" means an individual, corporation, limited liability  
12 company, association, partnership, trust, foundation or any other  
13 entity however styled.

14       (3) "Solicit" and "solicitation" mean any request directly or indirectly  
15 for money, credit, property, financial assistance or other thing of any  
16 kind or value on the plea or representation that such money, credit,  
17 property, financial assistance or other thing of any kind or value is to  
18 be used for a charitable purpose or benefit a charitable organization.  
19 "Solicit" and "solicitation" shall include, but shall not be limited to, the  
20 following methods of requesting or securing such money, credit,  
21 property, financial assistance or other thing of value: (A) Any oral or  
22 written request; (B) any announcement to the press, over the radio or  
23 television or by telephone or telegraph concerning an appeal or  
24 campaign by or for any charitable organization or purpose; (C) the  
25 distribution, circulation, posting or publishing of any handbill, written  
26 advertisement or other publication; (D) the sale of, offer or attempt to  
27 sell, any advertisement, advertising space, book, card, tag, coupon,  
28 device, magazine, membership, merchandise, subscription, flower,  
29 ticket, candy, cookies or other tangible item in connection with an  
30 appeal made for any charitable organization or purpose, or where the  
31 name of any charitable organization is used or referred to in any such  
32 appeal as an inducement or reason for making any such sale, or when  
33 or where in connection with any such sale, any statement is made that  
34 the whole or any part of the proceeds from any such sale is to be used  
35 for any charitable purpose or benefit any charitable organization. A  
36 solicitation shall be deemed to have taken place whether or not the  
37 person making the same receives any contribution.

38       (4) "Charitable purpose" means any benevolent, educational,  
39 philanthropic, humane, scientific, patriotic, social welfare or advocacy,  
40 public health, environmental conservation, civic or eleemosynary  
41 objective.

42       (5) "Contribution" means the grant, promise or pledge of money,  
43 credit, property, financial assistance or other thing of any kind or value  
44 in response to a solicitation. "Contribution" shall not include bona fide  
45 fees, dues or assessments paid by members, provided membership is  
46 not conferred solely as consideration for making a contribution in  
47 response to a solicitation.

48 (6) "Fund-raising counsel" means a person who for compensation  
49 plans, manages, advises or consults with respect to the solicitation in  
50 this state of contributions by a charitable organization, but who does  
51 not solicit contributions and who does not directly or indirectly  
52 employ, procure or engage any person compensated to solicit  
53 contributions. A bona fide nontemporary salaried officer or employee  
54 of a charitable organization shall not be deemed to be a fund-raising  
55 counsel.

56 (7) "Paid solicitor" means a person who for [compensation] any  
57 consideration, other than any nonmonetary gift of nominal value  
58 awarded to a volunteer solicitor as an incentive or token of  
59 appreciation, performs for a charitable organization any service in  
60 connection with which contributions are solicited by such person or by  
61 any person he directly or indirectly employs, procures or engages to  
62 solicit for such compensation. A bona fide nontemporary salaried  
63 officer or employee of a charitable organization shall not be deemed to  
64 be a paid solicitor.

65 (8) "Commercial coventurer" means a person who for profit is  
66 regularly and primarily engaged in trade or commerce in this state  
67 other than in connection with the raising of funds for charitable  
68 organizations or purposes and who conducts a charitable sales  
69 promotion.

70 (9) "Charitable sales promotion" means an advertising or sales  
71 campaign, conducted by a commercial coventurer, which represents  
72 that the purchase or use of goods or services offered by the commercial  
73 coventurer are to benefit a charitable organization or purpose.

74 (10) "Department" means the Department of Consumer Protection.

75 (11) "Commissioner" means the Commissioner of Consumer  
76 Protection.

77 (12) "Membership" means that which entitles a person to the  
78 privileges, professional standing, honors or other direct benefit of the

79 organization and the rights to vote, elect officers and hold office in the  
80 organization.

81 (13) "Parent organization" means that part of a charitable  
82 organization which supervises and exercises control over the  
83 solicitation and expenditure activities of one or more chapters,  
84 branches or affiliates.

85 (14) "Gross revenue" means income of any kind from all sources,  
86 including all amounts received as the result of any solicitation by a  
87 paid solicitor.

88 Sec. 2. Section 21a-190b of the general statutes is repealed and the  
89 following is substituted in lieu thereof (*Effective October 1, 2009*):

90 (a) Every charitable organization not exempted by section 21a-190d  
91 shall annually register with the department prior to conducting any  
92 solicitation or prior to having any solicitation conducted on its behalf  
93 by others. Application for registration shall be made on forms  
94 prescribed by the department and shall include payment of a fee of  
95 fifty dollars. Such application shall include: (1) A registration  
96 statement, (2) an annual financial report for such organization for the  
97 preceding fiscal year that is prepared in accordance with the  
98 provisions of subsection (a) of section 21a-190c, as amended by this act,  
99 and (3) an audited financial statement as required by subsection (b) of  
100 said section 21a-190c. Two authorized officers of the organization shall  
101 sign the registration statement and shall certify that the statements  
102 therein are true and correct to the best of their knowledge. A chapter,  
103 branch or affiliate in this state of a registered parent organization shall  
104 not be required to register provided the parent organization files a  
105 consolidated annual registration for itself and its chapter, branch or  
106 affiliate. Each charitable organization shall annually renew its  
107 registration not later than five months after the end of such  
108 organization's fiscal year.

109 (b) In the event the department determines that the application for  
110 registration does not contain the documents required in subsection (a)

111 of this section or is not in accordance with the regulations adopted by  
112 the commissioner pursuant to this chapter, the department shall notify  
113 the charitable organization, in writing, of such noncompliance not later  
114 than ten days after the department's receipt of such application for  
115 registration. An application for registration shall be deemed to be  
116 approved if the charitable organization is not notified of  
117 noncompliance by the department not later than ten days after the  
118 department's receipt of the application for registration. Any such  
119 charitable organization may request a hearing on its noncompliant  
120 status not later than seven days after receipt of such noncompliance  
121 notice. Such hearing shall be held not later than seven days after the  
122 department's receipt of such request and a determination as to the  
123 organization's compliance status shall be rendered no later than three  
124 days after such hearing.

125 (c) In addition to the application fee required pursuant to subsection  
126 (a) of this section, a charitable organization shall pay a late fee of  
127 twenty-five dollars for each month, or part thereof, that such  
128 application for registration is late, except that such late fee shall not  
129 include any month during which an extension of time was granted  
130 pursuant to subsection (d) of this section. The commissioner may,  
131 upon written request and for good cause shown, waive or reduce any  
132 late fee under this section.

133 (d) The commissioner may, upon written request and for good  
134 cause shown, grant an extension of time, not to exceed [one hundred  
135 eighty days] six months from the date the report was due, for the filing  
136 of a charitable organization's annual financial report. Any previous  
137 registration shall remain in effect during any such extension period.

138 (e) In the event that a charitable organization fails to register in  
139 accordance with the provisions of this section, such organization shall  
140 include in its application for registration an annual financial report for  
141 each of the previous years in which such organization was required to  
142 file an application for registration or an annual financial report.

143 (f) Any charitable organization registered in accordance with this  
144 section on September 30, 2005, shall be deemed to be registered  
145 pursuant to this section until the last day of the fifth month after the  
146 close of the fiscal year in effect on September 30, 2005.

147 Sec. 3. Section 21a-190c of the general statutes is repealed and the  
148 following is substituted in lieu thereof (*Effective October 1, 2009*):

149 (a) Every charitable organization required to register pursuant to  
150 section 21a-190b, as amended by this act, shall annually file with the  
151 department, as part of such organization's application for registration,  
152 a financial report for its most recently completed fiscal year, which  
153 report shall include a financial statement and such other information  
154 as the commissioner may require and shall be signed by two  
155 authorized officers of the organization, one of whom shall be the chief  
156 fiscal officer of the organization. The information contained in such  
157 report shall be available to the public. Such officers shall certify that  
158 such report is true and correct to the best of their knowledge. The  
159 commissioner shall prescribe the form of the report and may prescribe  
160 standards for its completion. The commissioner may accept, under  
161 such conditions as said commissioner may prescribe, a copy or  
162 duplicate original of financial statements, reports or returns filed by  
163 the charitable organization with the Internal Revenue Service or  
164 another state having requirements similar to the provisions of sections  
165 21a-190a to 21a-190l, inclusive, as amended by this act.

166 (b) A charitable organization with gross revenue in excess of [two]  
167 five hundred thousand dollars in the year covered by the report shall  
168 include with its financial statement an audit report of a certified public  
169 accountant. For purposes of this section, gross revenue shall not  
170 include grants or fees from government agencies or the revenue  
171 derived from funds held in trust for the benefit of the organization.  
172 The commissioner may, upon written request and for good cause  
173 shown, waive the audit report requirement under this subsection.

174 (c) Every charitable organization required to file an annual report

175 and every charitable organization subject to the provisions of  
176 subdivision (6) of section 21a-190d shall keep true fiscal records which  
177 shall be available to the department for inspection upon request. Such  
178 organization shall retain such records for no less than three years after  
179 the end of the fiscal year to which they relate.

180 Sec. 4. Subsection (d) of section 45a-535e of the general statutes is  
181 repealed and the following is substituted in lieu thereof (*Effective from*  
182 *passage*):

183 (d) Nothing in this section shall be construed as amending or  
184 altering existing standards in the [general statutes] law for  
185 approximation, cy pres or equitable deviation actions.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	21a-190a
Sec. 2	<i>October 1, 2009</i>	21a-190b
Sec. 3	<i>October 1, 2009</i>	21a-190c
Sec. 4	<i>from passage</i>	45a-535e(d)

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

House "A" (LCO 5477) eliminated a fee increase for fundraising counsel which would have resulted in a minimal revenue gain to the state.



**OLR Bill Analysis****HB 6433 (as amended by House "A")\******AN ACT CONCERNING THE REGULATION OF CHARITABLE FUNDS.*****SUMMARY:**

This bill increases, from \$200,000 to \$500,000, the minimum gross revenue threshold for the requirement that a charity's annual report be audited. By law, all charitable organizations that solicit funds must register and file annual financial reports with the Department of Consumer Protection (DCP). Organizations above the gross revenue threshold must also file an audit report prepared by a certified public accountant.

The bill allows the DCP commissioner to waive audit requirements and waive or reduce late fees. The bill also extends the deadline the commissioner may grant for filing reports.

The bill changes the definition of "paid solicitor" to include a person who for consideration, rather than compensation, solicits or arranges the solicitation of contributions.

The bill also specifies that nothing in the statute regarding the release or modification of restrictions contained in a gift instrument on the management, investment, or purpose of institutional funds in the Uniform Prudent Management of Institutional Funds Act can be construed to amend or alter the existing standards in the law (which apparently includes the common law), rather than the general statutes. Related common law doctrines include cy pres or approximation and equitable deviation actions (see BACKGROUND).

\*House Amendment "A" removes a provision in the original bill

(File No. 72) that increased the license fee for a fundraising counsel from \$120 to \$500.

EFFECTIVE DATE: October 1, 2009, except for the provision relating to the Uniform Prudent Management of Institutional Funds Act, which is effective upon passage.

### **WAIVERS, EXTENSIONS, AND LATE FEES**

The bill authorizes the commissioner to (1) waive the audit requirement and (2) waive or reduce late fees by written request showing good cause. Under current law, he may grant a 180-day extension to late filers; the bill allows him to grant up to six months. By law, the \$25 per month late fee is not due in extension months.

### **ORGANIZATION EMPLOYEES**

The bill changes the definition of “paid solicitor” to include a person who for consideration, rather than compensation, solicits or arranges for solicitation of contributions, excluding salaried non-temporary officers or employees. This does not include nonmonetary, nominal gifts given to volunteers as an incentive or token of appreciation.

### **BACKGROUND**

#### ***Release or Modification of Restrictions Contained in a Gift Instrument***

Under this statute, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund with the donor’s consent on record. The fund still must be used for a charitable purpose of the institution.

A court, upon application of the institution, may modify a restriction that becomes impracticable or wasteful, impairs the management or investment of the fund, or because of unanticipated circumstances, could be modified to further the purposes of the fund. In such cases, the institution must notify the attorney general, who must be given an opportunity to be heard. To the extent practicable,

any modification must be made in accordance with the donor's probable intent.

### ***Uniform Prudent Management of Institutional Funds Act***

The act applies to institutions, which are defined as entities organized and operated exclusively for charitable purposes; government or government subdivisions, agencies, or instrumentalities, to the extent that they hold funds exclusively for a charitable purpose; and trusts that had both charitable and noncharitable interests, after all noncharitable interests have terminated. The term "charitable purpose" includes purposes related to relieving poverty, advancing education or religion, promoting health, and other purposes that are communally beneficial (CGS § 45a-535, et seq.).

### ***Common Law Doctrines***

The cy pres doctrine allows the court to amend the terms of a charitable trust as closely as possible to the original intention of the deceased when the original objective becomes impossible, impracticable, or illegal to perform. Approximation is, like cy pres, a legal principle that a court may vary the terms of the administration of a trust to carry out the intentions of the trustor or to preserve the trust.

Equitable deviation is distinguishable from cy pres or approximation in that it changes only the administrative provisions of a trust, while cy pres involves an alteration of the purpose to which the rest of the trust is to be applied.

### ***Related Bill***

The General Law Committee favorably reported SB 780, which also increases, from \$200,000 to \$500,000, the minimum gross receipt threshold for charitable organizations required to include an audit report with their annual financial statements. That bill has an effective date of July 1, 2009.

### **COMMITTEE ACTION**

## General Law Committee

Joint Favorable

Yea 18      Nay 0      (02/26/2009)